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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,897	07/17/2003	Michael F. Wright	RYL 2 0535-3-3-1-1-1	2825
7590 04/09/2004			EXAMINER	
Jay F. Moldovanyi FAY, SHARPE, FAGAN, MINNICH & McKEE, LLP 1100 Superior Avenue, Seventh Floor Cleveland, OH 44114-2518			SNIDER, THERESA T	
			ART UNIT	PAPER NUMBER
			1744	
DATE MAILED: 04/09/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/622,897

Applicant(s)

WRIGHT ET AL.

Examiner

Theresa T. Snider

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10 and 22-87 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 37, 39-44, 46, 47, 49-55, 71-77, 79, 80 and 82-87 is/are allowed.
- 6) ☒ Claim(s) 10, 22-36, 38, 45, 48, 56-58, 60-63, 65-69, 78 and 81 is/are rejected.
- 7) ☒ Claim(s) 59, 64 and 70 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7/17, 11/10/2003.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

1. The reference cited on the information disclosure statement filed 11/10/2003 has not been considered because it was previously cited on the information disclosure statement of 7/17/2003.

Drawings

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "164" has been used to designate both passage (page 16, line 11) and bore (page 16, line 29 and page 17, line 5). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

3. The disclosure is objected to because of the following informalities:

Exemplary of such:

Page 18, line 15, 'a' should be replaced with 'the';

Line 26, '124' should be inserted after 'structure'.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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5. Claims 10, 30, 33, 38, 45, 48, 60, 63, 78 and 81 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Exemplary of such:

Claim 10, line 8, it is unclear as to whether the 'a suction airstream' is in addition to that of line 3 or one in the same;

Line 8, it is unclear as to which inlet 'said inlet' refers; that of line 7 or line 5;

Line 15, it is unclear as to whether the 'a suction airstream' is in addition to that of line 3 or one in the same;

Claim 30, line 1, 'said filter member' lacks proper antecedent basis.

Claim 33, line 2, 'said nozzle base' lacks proper antecedent basis.

Claim 38, line 3, 'said dirt cup entrance' and 'said dirt cup exit' lack proper antecedent basis.

Claim 45, line 1, 'said filter member' lacks proper antecedent basis.

Claim 48, line 2, 'said nozzle base' lacks proper antecedent basis.

Claim 60, line 2, 'said suction opening' lacks proper antecedent basis.

Claim 63, line 1, 'said filter member' lacks proper antecedent basis.

Claim 78, line 1, 'said filter member' lacks proper antecedent basis.

Claim 81, line 2, 'said nozzle base' lacks proper antecedent basis.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claim 10 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Ripple.

Ripple discloses a first housing member defining a dirt storage chamber (fig. 2, #18).

Ripple discloses a second housing member defining a main suction opening (fig. 1, #10).

Ripple discloses a first conduit for fluidically connecting the suction opening with the storage chamber (fig. 1, #65).

Ripple discloses a suction source located beneath the storage chamber (fig. 4, #45).

Ripple discloses a second conduit for fluidically connecting an outlet of the storage chamber with an inlet of the suction source (fig. 2, area defined by walls of #27).

Ripple discloses a main filter assembly between the dirt storage chamber and the suction source (fig. 4, #37).

8. Claim 10 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Yonkers.

Yonkers discloses a first housing member defining a dirt storage chamber (fig. 1, #15).

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Yonkers discloses a second housing member defining a main suction opening (fig. 1, #12).

Yonkers discloses a first conduit for fluidically connecting the suction opening with the storage chamber (fig. 8, #81).

Yonkers discloses a suction source located beneath the storage chamber (fig. 8, #16).

Yonkers discloses a second conduit for fluidically connecting an outlet of the storage chamber with an inlet of the suction source (fig. 8, #50).

Yonkers discloses a main filter assembly between the dirt storage chamber and the suction source (fig. 8, #23).

9. Claim 10 is rejected under 35 U.S.C. 102(e) as being clearly anticipated by McCormick.

McCormick discloses a first housing member defining a dirt storage chamber (fig. 2, #36).

McCormick discloses a second housing member defining a main suction opening (fig. 1, #12).

McCormick discloses a first conduit for fluidically connecting the suction opening with the storage chamber (fig. 2, #62).

McCormick discloses a suction source located beneath the storage chamber (fig. 2, #18).

McCormick discloses a second conduit for fluidically connecting an outlet of the storage chamber with an inlet of the suction source (fig. 2, area defined between #44 and 18).

McCormick discloses a main filter assembly between the dirt storage chamber and the suction source (fig. 2, #44).

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10. Claims 22-23, 26-28 and 31-32 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by GB2265096.

GB2265096 discloses a base portion having a suction opening (fig. 7, #75).

GB2265096 discloses an upper housing hingedly connected to the base (fig. 7, #71).

GB2265096 discloses a suction source (fig. 7, #78).

GB2265096 discloses a dirt cup removably mounted in an opening of the upper housing (page 3, lines 27-28).

GB2265096 discloses a filter located in and removable with the dirt cup (page 3, lines 16-17, page 4, lines 2-6 and fig. 7, arrows located near top of #70).

With respect to claim 23, GB2265096 discloses a particle collection chamber in the dirt cup (page 4, lines 2-6).

With respect to claim 26, GB2265096 discloses the suction source located beneath the dirt cup (fig. 7, #78).

With respect to claim 27, GB2260596 discloses a first conduit for communicating the suction opening with the dirt cup (fig. 7, dashed line in #75).

With respect to claim 28, GB2260596 discloses a second conduit for facilitating communication between the dirt cup and the suction source (fig. 7, area to right and above of #78 with arrow going through).

With respect to claims 31-32, GB2260596 discloses the filter and the dirt cup axis being coaxial (figs. 7 and 4).

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11. Claims 22-23, 56, 60-61 and 65-69 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Lessig, III et al..

Lessig, III et al. discloses a base portion including a nozzle opening (fig. 2, #24).

Lessig, III et al. discloses an upright housing section, having an opening, hingedly connected to the base portion (col. 4, lines 61-63).

Lessig, III et al. discloses a dirt cup selectively mounted in the opening (fig. 5, #76).

Lessig, III et al. discloses a filter located in the dirt cup and removable from an upper end of the dirt cup (fig. 5, #82).

With respect to claims 23 and 56, Lessig, III et al. discloses a particle collection chamber located in the bottom of the dirt cup (fig. 3, #76).

With respect to claims 33 and 56, Lessig, III et al. discloses brushroll in the base portion (fig. 2, #30).

With respect to claims 27 and 60, Lessig, III et al. discloses a first conduit between the suction opening and the dirt cup (fig. 3, #46).

With respect to claims 28 and 61, Lessig, III et al. discloses a second conduit between the dirt cup and the suction source (fig. 3, area between #98,86).

With respect to claims 35 and 65, Lessig, III et al. discloses the dirt cup having a handle (fig. 3, #90).

With respect to claims 36 and 67, Lessig, III et al. discloses a latch mechanism (fig. 3, #92).

With respect to claim 68, Lessig, III et al. discloses the filter being approximately cylindrical in shapes (fig. 3, #82).

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With respect to claim 69, Lessig, III et al. disclose a support member for the filter (fig. 3, #84).

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

14. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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15. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over GB2265096 as applied to claim 22 above, and further in view of GB2280388.

GB2265096 discloses a similar vacuum cleaner however fails to disclose a pleated filter GB2280388 discloses the use of pleated filter in a vacuum cleaner (abstract). It would have been obvious to one of ordinary skill in the art to provide the pleated filter of GB2280388 in GB2265096 to allow for the greatest surface area for dirt retention.

16. Claims 24 and 33-34 is rejected under 35 U.S.C. 103(a) as being unpatentable over GB2265096 as applied to claim 22 above, and further in view of Yonkers.

GB2265096 discloses a similar vacuum cleaner however fails to disclose a brushroll.

Yonkers discloses a vacuum cleaner with a transparent dirt cup (fig. 2, #15). It would have been obvious to one of ordinary skill in the art to provide the transparent dirt cup of Yonkers in GB2265096 to allow an operator to view when it is full.

With respect to claim 33, Yonkers discloses a brushroll in a base portion of a vacuum cleaner having a suction opening (fig. 8, #84). It would have been obvious to one of ordinary skill in the art to provide the brushroll of Yonkers in GB2265096 to allow for the most effective suctioning of dirt by allowing for agitation of the surface being cleaned.

With respect to claim 34, GB2265096 discloses the suction source located beneath the dirt cup (fig. 7, #78).

17. Claims 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB2265096 as applied to claim 22 above, and further in view of McCormick.

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GB2265096 discloses a similar vacuum cleaner however fails to disclose a filter located downstream from the suction source.

McCormick discloses a vacuum cleaner having a HEPA filter located downstream from the suction source (fig. 2, #18,50). It would have been obvious to one of ordinary skill in the art to provide the filter of McCormick in GB2265096 to ensure that the air being discharge tot eh environment is particle free.

18. Claims 35-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB2265096 as applied to claim 22 above, and further in view of Lessig, III et al..

GB2265096 discloses a similar vacuum cleaner however fails to disclose the dirt cup having a handle.

Lessig, III et al. discloses a vacuum cleaner with a dirt cup having a handle and latch (fig. 3, #90,92). It would have been obvious to one of ordinary skill in the art to provide the handle and latch of Lessig, III et al. in GB2265096 to provide for ease in removal of the cup from the housing.

19. Claims 24 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lessig, III et al. as applied to claims 22 and 56 above, and further in view of Yonkers.

Lessig, III et al. discloses a similar vacuum cleaner however fails to disclose a transparent dirt cup.

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Yonkers discloses a vacuum cleaner with a transparent dirt cup (fig. 2, #15). It would have been obvious to one of ordinary skill in the art to provide the transparent dirt cup of Yonkers in Lessig, III et al. to allow an operator to view when it is full.

20. Claims 25 and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lessig, III et al. as applied to claims 22 and 56 above, and further in view of GB2265096.

Lessig, III et al. discloses a similar vacuum cleaner however fails to disclose a pleated filter

GB2280388 discloses the use of pleated filter in a vacuum cleaner (abstract). It would have been obvious to one of ordinary skill in the art to provide the pleated filter of GB2280388 in Lessig, III et al. to allow for the greatest surface area for dirt retention.

21. Claims 29-30 and 62-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lessig, III et al. as applied to claim 56 above, and further in view of McCormick.

Lessig, III et al. discloses a similar vacuum cleaner however fails to disclose a filter located downstream from the suction source.

McCormick discloses a vacuum cleaner having a HEPA filter located downstream from the suction source (fig. 2, #18,50). It would have been obvious to one of ordinary skill in the art to provide the filter of McCormick in Lessig, III et al. to ensure that the air being discharge tot eh environment is particle free.

Double Patenting

22. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

23. Claim 22 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 18 and 36 of U.S. Patent No. 6,260,234. Although the conflicting claims are not identical, they are not patentably distinct from each other because they both have the same structural elements.

24. Claim 37 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 23 of U.S. Patent No. 6,260,234. Although the conflicting claims are not identical, they are not patentably distinct from each other because the inclusion of handle on the housing is obvious to allow for ease in propelling the cleaner across a surface.

25. Claim 53 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 26 of U.S. Patent No. 6,260,234. Although the conflicting claims are not identical, they are not patentably distinct from each other because they contain the same structural elements.

Allowable Subject Matter

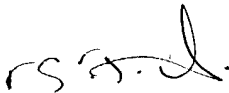
26. Claims 37, 39-44, 46-47, 49-55, 71-77, 79-80 and 82-87 are allowed.
27. Claims 38, 45, 48, 78 and 81 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.
28. Claims 59, 64 and 70 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
29. The following is a statement of reasons for the indication of allowable subject matter: the prior art discloses an upright vacuum cleaner having a base portion with a suction opening, an upright housing portion, having an opening, hingedly connected to the base portion, a dirt cup removably mounted from the upright housing portion, a suction source mounted in one of base portion or upright portion, a filter with a support member located in the dirt cup removable from an upper end of the dirt cup and particle collection chamber in the bottom of the dirt cup HOWEVER fails to disclose or fairly suggest the suction source being located beneath the dirt cup OR the dirt cup and the filter axis being parallel OR the support member having a longitudinal axis parallel to the longitudinal axis of the dirt cup OR the presence of a separator, in addition to the filter, that is located at least partially in the dirt cup.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Theresa T. Snider whose telephone number is (571) 272-1277. The examiner can normally be reached on Monday-Wednesday-Friday (6:30AM-3:00PM).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J. Warden can be reached on (571) 272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Theresa T. Snider
Primary Examiner
Art Unit 1744

04/05/2004